

2013 HOUSE BILL 2170 LEGISLATION MOVES FORWARD

HB 2170 makes numerous changes to sentencing, probation, and postrelease supervision statutes. The bill represents a comprehensive change in the criminal justice system as it relates to sentencing procedure and practice. It is the product of many months of partnering between the Council of State Governments Justice Center, Department of Corrections and the Sentencing Commission. Almost a year ago, CSG was invited by all branches of state government to study the Kansas criminal justice system. The Commission, fully supportive of the effort, provided valuable data and input via many meetings with CSG to ensure Kansas-specific information was received and analyzed by the nonprofit organization. After exhaustive research and evaluation, all three entities drafted a single bill to encompass a criminal sentencing plan that would promote public safety and decrease prison bed space by utilizing evidence-based practices. Some of the primary elements of the legislation are highlighted below. For your reference, a copy of the bill that is anticipated to be signed by the Governor may be found [here](#).

Addition of Postrelease Supervision for Revoked Probationers

The bill makes numerous amendments to the law concerning postrelease supervision. The bill specifies that persons convicted of crimes committed on or after July 1, 2003, but before July 1, 2013, shall not be subject to a period of postrelease supervision. Offenders convicted of crimes committed on or after July 1, 2013, however, are required to serve a period of postrelease supervision upon the completion of the underlying prison term when probation, assignment to community corrections, suspension of sentence, a nonprison sentence is revoked, or the underlying prison term expires while the offender is serving a sanction for a violation of conditions of release or assignment.

Evidence-based Practices

Additionally, the bill allows a low risk defendant who has paid all restitution and for 12 months has been compliant with the terms of probation, assignment to community corrections, suspension of sentence, or nonprison sanction to be eligible for discharge from such period of supervision by the court. The court is required to grant the discharge absent substantial and compelling reasons for denying discharge. A person serving a period of incarceration for a supervision violation shall not be eligible for a modification, however, until the person is released and returned to postrelease supervision. The Prisoner Review Board also has the discretion to provide for early discharge from postrelease supervision if the defendant has petitioned for early discharge and has paid any restitution ordered.

Prison Good Time and Programming Credit Modified

Currently, an incarcerated offender's good time and programming credits that are earned while in prison are added to the offender's originally-imposed postrelease supervision time upon release. The bill eliminates this KDOC practice with the exception of offenders sentenced to imprisonment for a sexually violent crime, a sexually motivated crime requiring the offender to register, electronic solicitation, or unlawful sexual relations. Similarly, the bill provides that good time earned and subtracted from the prison sentence or any other consecutive or concurrent sentence of a person sentenced to imprisonment for a sexually violent crime, a sexually motivated crime requiring the offender to register, electronic solicitation, or unlawful sexual relations shall be added to the inmate's postrelease supervision term.

Graduated Sanctions for Probation Technical Violators

In the area of violations of the conditions of release, assignment, or nonprison sanction, the bill allows a defendant arrested for such a violation to waive the right to a hearing on the violation, after the defendant has been apprised of the right by the supervising court services or community correctional services officer.

If the original crime of conviction was a misdemeanor and a violation is established, the bill allows the court to continue or revoke the probation, assignment to community corrections, suspension of sentence, or nonprison sanction; require the defendant to serve the sentence imposed or any lesser sentence; and, if imposition of sentence was suspended, impose any sentence that originally might have been imposed. If the defendant waives the right to a hearing and, in the sentencing order, the court has not specifically withheld the authority of court services or community corrections to impose sanctions, the defendant's supervising court services officer, with the concurrence of the chief court services officer or the defendant's community corrections officer, with the concurrence of the community corrections director, may impose an intermediate sanction of confinement in jail for up to six days each month in any three separate months during the period of release of supervision. The six days per month can be imposed only as 2-day or 3-day consecutive periods, not to exceed 18 total days of confinement.

If the original crime of conviction is a felony and a violation is established, the bill allows the court to impose the following series of increasing or graduated intermediate violation sanctions:

- Continue or modify the conditions of release;
- Impose the intermediate sanction of confinement in jail as outlined above;
- If the violator already has at least one intermediate sanction of confinement in jail, remand the defendant to the custody of KDOC for a period of 120 days, which the Secretary may reduce by up to 60 days (this penalty shall not be imposed more than once during the term of supervision);
- If the violator already has been remanded to KDOC custody for a period of 120 days, remand the defendant to KDOC custody for a period of 180 days, which the Secretary may reduce by up to 90 days (this penalty shall not be imposed more than once during the term of supervision);
- If the violator already has been remanded to KDOC custody for a period of 180 days, revoke probation, assignment to community corrections, suspension of sentence, or nonprison sanction; require the defendant to serve the sentence imposed or any lesser sentence; and, if imposition of sentence is suspended, impose any sentence that originally might have been imposed.

The bill provides, however, that the period of time spent in jail or in the custody of KDOC shall not exceed the time remaining on the person's underlying prison sentence. Upon completion of time spent in the custody of KDOC, the offender shall return to community corrections supervision, and the bill specifies sheriffs shall not be responsible for the return of the offender to the county where the community correctional services supervision is assigned.

The court may revoke the probation, assignment to community corrections, suspension of sentence, or nonprison sanction without first imposing the preceding violation sanctions:

- If the court finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the offender otherwise will not be served; or
- If the offender commits a new felony or misdemeanor or absconds from supervision.

For crimes committed on and after July 1, 2013, an offender whose nonprison sanction is revoked or whose underlying prison term expires after being remanded to the custody of KDOC is required to serve a period of postrelease supervision upon completion of the prison portion of the underlying sentence. For offenders sentenced prior to July 1, 2013, KDOC is required to modify the period of postrelease supervision pursuant to the schedule outlined in the bill.

Concerning participation in SB 123 drug abuse treatment program, the bill allows for the same graduated intermediate sanctions as set forth above, in addition to revocation of probation which already is allowed, when a defendant fails to participate in or has a pattern of intentional conduct that demonstrates the defendant's refusal to comply with or participate in a drug abuse treatment program.

Sentencing Commission Monitoring and Oversight Approved

Finally, the bill provides the Commission the authority to make statewide supervision and placement cutoff decisions based upon the risk levels and needs of the offenders in the state. The KSC is required to periodically review data and make recommended changes.

The KSC is also required by the bill to determine the impact and effectiveness of the bill regarding supervision and sanctions for felony offenders as it relates to recidivism in prison and community-based supervision populations.

Staff of the Commission anticipates that the necessary modifications to the Presentence Investigation Report, Journal Entry of Judgment, and Journal Entry of Probation Revocation Hearing will be proposed shortly for approval by the full Commission. Changes to the forms will be posted on the Commission's newly redesigned web site at www.sentencing.ks.gov.

Upon signing, HB 2170 becomes law July 1, 2013.